

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Self Communications, Inc.)	File No. D126953
)	
Reinstatement Application for 218-219 MHz)	NAL/Acct. No. X 2051 00001
Service License KIVD0006, Chicago, Illinois and)	
Request for Waiver of Sections 1.949(a) and)	
1.955(a)(1) of the Commission's Rules)	

**ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: May 23, 2000

Released: May 23, 2000

Before the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On May 24, 1999, Self Communications, Inc. (Self) filed an application to reinstate its license¹ and concurrently submitted a request for waiver of Sections 1.949(a) and 1.955(a)(1) of the Commission's Rules² to permit such a reinstatement.³ For the reasons discussed below, and based on Commission rules and practices that were in effect at the time Self filed its reinstatement application, we grant Self's waiver request and reinstate its license. We also conclude that Self is apparently liable for a forfeiture in the amount of one thousand five hundred dollars (\$1500).

II. BACKGROUND

2. On March 28, 1994, Self was granted a 218-219 MHz Service (then known as the Interactive Video and Data Service, or IVDS) license, Call Sign KIVD0006, for frequency block B in the Chicago, Illinois, market. Self's license was issued for a five-year term that was scheduled to expire on March 28, 1999.⁴

3. On September 17, 1998, the Commission released a *Notice of Proposed Rulemaking* that examined ways to maximize the efficient and effective use of the 218-219 MHz band, and proposed

¹ Self Communications, Inc., Reinstatement Application for 218-219 MHz Station KIVD0006, filed May 24, 1999 (Reinstatement Application).

² 47 C.F.R. §§ 1.949(a), 1.955(a)(1).

³ Reinstatement Application Exhibit A (Waiver Request).

⁴ *Id.* See also former 47 C.F.R. § 95.811(d) (setting forth a five-year license term).

numerous modifications to the licensing and technical rules for the 218-219 MHz Service, including changing the license term from five to ten years.⁵ On March 26, 1999, the Public Safety and Private Wireless Division (Division) of the Wireless Telecommunications Bureau waived the five-year construction benchmark requirement set forth in former Section 95.833 of the Commission's Rules, in response to requests for waivers from Self and other 218-219 MHz Service licensees.⁶ On May 24, 1999, Self filed the above-captioned application to reinstate its license and requested a waiver of the Commission's Rules to permit the reinstatement, acknowledging its failure to file a timely renewal application. On September 10, 1999, the Commission released a *Report and Order* largely adopting the proposals the Commission made in the *218-219 Flex NPRM* and extending the license term to ten years.⁷ The new rules took effect on January 3, 2000.⁸

III. DISCUSSION

4. Self has requested a waiver of Sections 1.949(a) (which requires that renewal applications be filed before the license expiration date) and 1.955(a)(1) (which provides that licenses terminate automatically on the expiration date unless a timely renewal application is filed) of the Commission's Rules, in order to reinstate its 218-219 MHz Service license.⁹ To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either (a) that, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative; or (b) that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and grant of the requested waiver would be in the public interest.¹⁰ As discussed in further detail, herein we find that grant of a waiver is warranted.

5. While we do not excuse Self's omission to file its renewal application in a timely manner, we nonetheless find that unusual factual circumstances are present in the instant matter. Self contends that it did not file a timely renewal application because it believed that it was not required to file a renewal application in March 1999 given that the Commission had adopted a proposal in the *218-219 MHz Flex NPRM* to change the license term from five to ten years.¹¹ Self further contends that its belief to this effect was reinforced by the fact that it did not receive a notice from the FCC to file an application seeking renewal of its 218-219 MHz Service license.¹² As an initial matter, we note that Self's belief that the Commission had adopted its outstanding proposal to extend the license term of 218-219 MHz Service

⁵ *218-219 MHz Flex NPRM*, 13 FCC Rcd at 19084 ¶ 36.

⁶ Request of Licensees in the 218-219 MHz Service for Waiver of the Five-Year Construction Deadline, *Order*, 14 FCC Rcd 5190 (WTB PSPWD 1999) (*Waiver Order*).

⁷ Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order*, WT Docket No. 98-169, 15 FCC Rcd 1497, 1517 ¶ 31, (1999) (*218-219 MHz Flex R&O*).

⁸ 63 Fed. Reg. 59656 (Nov. 3, 1999).

⁹ 47 C.F.R. §§ 1.949(a), 1.955(a)(1).

¹⁰ 47 C.F.R. § 1.925(b)(3).

¹¹ Waiver Request at 1-2.

¹² *Id.*

licenses as of March 28, 1999, was erroneous. In this regard, we point to the *Waiver Order* which was released on March 26, 1999 and expressly stated that the Commission had not yet released a final order addressing the proposed rule changes in the 218-219 MHz Service.¹³

6. Although Self's belief was incorrect, we find that the scheduled expiration of a license during the pendency of a rule making which addresses the duration of the term for such license (given that the construction benchmarks associated with the license have been waived pending the resolution of the rule making) is an unusual circumstance. In this connection, we note that the Commission's decision in the 218-219 MHz Service rule making was to extend the term of 218-219 MHz Service licenses to ten years rather than to grant the renewal of license applications that had been filed by 218-219 MHz Service licensees.¹⁴ Even though Self contends that its failure to receive a renewal notice was an additional reason for its failure to file its renewal application in a timely manner, we do not find such reason to be a sufficient basis for granting its requested waiver, particularly in this instance where the licensee failed to provide the FCC with its most current address.¹⁵ We reiterate that "failure of a licensee to receive a [renewal form] from the Commission is no excuse for failure to file a renewal application."¹⁶ As a result, we have not considered this assertion as a factor in reaching our finding of unusual circumstance.

7. In addition, we believe that application of the rule would be unduly burdensome. First, we note that Self previously had indicated its desire to retain the subject 218-219 MHz Service license prior to the license's scheduled expiration date.¹⁷ We consider this to be a significant factor in determining whether granting relief is warranted in this context.¹⁸ Second, we note in the *218-219 Flex R&O* the Commission indicated its belief that "we should extend the license terms to ten years of those licensees who were issued licenses on March 28, 1994 (footnote omitted) and who have timely filed renewal applications or timely filed waiver requests pending at the FCC."¹⁹ As stated *supra*, Self's waiver request was pending at the FCC at the time of the Commission's decision. Third, we note that Self has made efforts to construct Station KIVD0006, including the actual construction and deconstruction of facilities over the past five years. Finally, we note that in the context of another proceeding, the Commission indicated that "our treatment of late-filed renewal applications should take into consideration the complete facts and circumstances involved, including the length of the delay in filing, the performance record of the licensee,

¹³ *Waiver Order*, 14 FCC Rcd at 5194.

¹⁴ *218-219 MHz Flex R&O*, 15 FCC Rcd at 1517 ¶ 32.

¹⁵ See Waiver Request at 1-2.

¹⁶ Daniel Goodman, Receiver, Dr. Robert Chan, Petition for Waiver of Sections 90.633 (c) and 1.1102 of the Commission's Rules, *Memorandum Opinion & Order and Order on Reconsideration*, 13 FCC Rcd 21944, 21973 (1998).

¹⁷ See *Waiver Order*, 14 FCC Rcd at 5190, n.3.

¹⁸ See Medina Electric Cooperative, Inc., *Order on Reconsideration*, DA 99-2314, ¶ 6 (WTB PSPWD rel. Oct. 26, 1999) (granting reinstatement of a 2 GHz license erroneously cancelled by licensee, in part because the fact that the licensee had negotiated a voluntary relocation agreement demonstrated that the licensee intended to continue operating the system).

¹⁹ *218-219 MHz Flex R&O*, 15 FCC Rcd at 1517 ¶ 32.

the reasons for the failure to timely file, and the potential consequences to the public if the license were to terminate.”²⁰ While the Commission stated that requests from applicants who filed more than thirty days after license expiration will not be routinely granted, it nonetheless noted that such applications would be subject to stricter review, and may be accompanied by enforcement action.²¹ In this connection, we note that Self’s waiver request was filed more than thirty days after the license expiration date. However, based on the totality of the circumstances in this matter and the Commission’s policies discussed herein, we find that application of the rule that renewal applications be filed prior to the expiration of a license term would be unduly burdensome in this instance. Thus, we conclude that Self has made the requisite showing that grant of a waiver is warranted. Consequently, we will reinstate its license and accept its late-filed renewal application. Self’s license will be subject to the same conditions and terms as those imposed by the Commission on 218-219 MHz Service licenses obtained by lottery as set forth in WT Docket No. 98-169.²²

8. However, we also find that Self Communications willfully violated Section 1.949 of the Commission’s Rules when it failed to file its renewal application on time for its 218-219 MHz Service license, Call Sign KIVD0006, Chicago, Illinois.²³ Self’s authorization for KIVD0006 ended on March 28, 1999.²⁴ Self, however, did not file for renewal of the authorization until May 24, 1999.²⁵ In this *Order*, we will grant Self’s waiver request to the extent that it seeks reinstatement of its license.

9. Section 1.949 of the Commission’s Rules states, in pertinent part, that “Applications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization for which the renewal is sought . . .” Based on the information before us, Self Communications filed its license renewal application for Call Sign KIVD0006 almost two months after the authorization for the station had expired, in apparent violation of Section 1.949 of the Commission’s Rules.

10. The guidelines contained in the Commission’s *Forfeiture Policy Statement* specify a base forfeiture amount of \$3000 for a failure to file a required form.²⁶ The guidelines, however, permit the issuance a higher or lower forfeiture than provided in the guidelines.²⁷ Section 503(b)(2)(D) of the Communications Act of 1934, as amended (the Act), requires the Commission to consider “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁸

²⁰ Biennial Regulatory Review—Amendment of Parts 0, 1, 13, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 (1999) (*ULS MO&O*).

²¹ *Id.*

²² See *218-219 MHz Flex R&O*, 15 FCC Rcd at 1517 ¶ 32.

²³ 47 C.F.R. § 1.949.

²⁴ *Lottery Grant Public Notice*.

²⁵ Reinstatement Application.

²⁶ See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission’s Rules (Forfeiture Policy Statement)*, 12 FCC Rcd 17087, 17113 (1997); 47 C.F.R. § 1.80(b)(4).

²⁷ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17112, 47 C.F.R. § 1.80(b)(4).

²⁸ 47 U.S.C. § 503(b)(2)(D).

In this case, taking into consideration all of the factors required by Section 503(b)(2)(D) of the Act, including, but not limited to, Self's voluntary disclosure of its violation to the Commission, we believe it is appropriate to reduce the amount of the proposed forfeiture from \$3,000 to \$1,500 for Call Sign KIVD0006.

IV. CONCLUSION

11. Because we have concluded that circumstances that would warrant grant of a waiver exist, we conclude that it is proper to grant Self a waiver and reinstate its license. Self states that it applied for reinstatement "immediately upon discovering that the renewal application was not filed,"²⁹ and we received its application less than two months after its license expired. For the reasons stated, we conclude that reinstatement of Self's license is warranted based on the particular circumstances described herein.

12. Because Self's failure to file a renewal application appears to stem largely from its own omissions,³⁰ and because we have established no policy guaranteeing the automatic reinstatement of 218-219 MHz Service licenses,³¹ we conclude that Self Communications is apparently liable for a forfeiture in the amount of one thousand five hundred (\$1500).

V. ORDERING CLAUSES

13. Accordingly, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the waiver request of Self Communications, Inc., filed May 24, 1999, is GRANTED to the extent stated herein, the five-year progress report filed as Exhibit B to application FCC File No. D126953 IS ACCEPTED, and the license for Call Sign KIVD0006 IS REINSTATED.

14. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended,³² and Section 1.80 of the Commission's Rules,³³ Self Communications, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of one thousand five hundred dollars (\$1,500) for its apparent and willful violation of Section 1.949 of the Commission's Rules.

15. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that within thirty days of the release of this Notice, Self Communications, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the

²⁹ Waiver Request at 2.

³⁰ Self Communications claims that two factors contributed to its failure to timely renew its license: failure to receive a renewal notice – which appears to have occurred because Self Communications did not have a current mailing address on file with the Commission – and its misconception that the Commission had adopted the proposal in the *218-219 MHz Flex NPRM* to change the license term from five to ten years. Waiver Request at 1-2.

³¹ *Contrast GMRS R&O*, 3 FCC Rcd at 6562 ¶ 71 (allowing for automatic reinstatement within six months of license expiration).

³² 47 U.S.C. § 503(b).

³³ 47 C.F.R. § 1.80.

proposed forfeiture.³⁴

16. IT IS FURTHER ORDERED that copies of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Self Communications, Inc. Attention: Rodney R. Eales, 2054 State Street, San Diego, CA 92101.

17. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debit management center at (202)418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above.

18. The response if any must be mailed to the Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, 445 12th Street, SW, Washington, DC, 20554 and MUST INCLUDE THE NAL/Acct. No. X 2051 00001 referenced above.

19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must be specifically identify the basis for the claim by reference to the financial documentation submitted

20. Requests for payment of the full amount under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, SW, Washington, DC 20554.³⁵

21. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

³⁴ 47 C.F.R. § 1.80.

³⁵ See 47 C.F.R. § 1.914.